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Avoiding Malpractice and Other Common Pitfalls in a Commercial Restructuring Case

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You Know You Are In Trouble When You Are Not Sure Who Is In Charge Of The Client

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You Know You Are In Trouble When You Are Not Sure Who Is In Charge Of The Client

Introduction

Filing bankruptcy papers on behalf of a client in a control fight, or in order to leverage a control fight, can be risky and expensive. Here are some of the concerns.

Discussion

1. Authority To File The Bankruptcy Petition Matters

Although filing a voluntary or involuntary bankruptcy petition is an act in federal court, it must be properly authorized under the filer's organic (corporate, limited liability company, partnership) documents.[1] Stated alternatively, a petition filed without proper authority should be dismissed.[2] In a close case, the issue of the burden of proof may be determinative.[3]

The impediment to the bankruptcy filing may be unanticipated – like the Texas case dismissed by the Fifth Circuit because the general partner lost all authority in the partnership upon filing its own bankruptcy petition.[4] Although a prohibition against bankruptcy may be unenforceable or avoided through careful planning, identifying the

[1] *In re NNN 123 N. Wacker, LLC*, 510 B.R. 854 (Bankr. N.D. Ill. 2014); *In re Crossover Fin. I, LLC*, 477 B.R. 196, 202 (Bankr. D. Colo. 2012); *In re Indus. Concerns, Inc.*, 289 B.R. 609, 618 (Bankr. W.D. Pa. 2003) (board approval required to file bankruptcy petition); *In re Am. Globus Corp.*, 195 B.R. 263 (Bankr. S.D.N.Y. 1996) (shareholders' general failure to follow bylaws prevented minority shareholder from obtaining dismissal of petition for lack of unanimity); *In re Protho Exp., Inc.*, 130 B.R. 517, 519 (Bankr. M.D. Tenn. 1991) (holder of stock pledge could not block authority to file via secret meeting); *Price v. Gurney*, 324 U.S. 100, 65 S.Ct. 513, 516-17 (1945) (under state law shareholders could not file Chapter X petition).

[2] *Keenihan v. Heritage Press, Inc.*, 19 F.3d 1255 (8th Cir. 1994); *In re Mid-S. Bus. Assocs., LLC*, 555 B.R. 565 (Bankr. N.D. Miss. 2016) (managing member of LLC lacked authority; case dismissed); *In re Audubon Quartet, Inc.*, 275 B.R. 783, 786 (Bankr. W.D. Va. 2002) (dismissal of chapter 7 deferred for board ratification); *In re Gen-Air Plumbing & Remodeling, Inc.*, 208 B.R. 426 (Bankr. N.D. Ill. 1997) (petition filed without consent of 50% shareholder or receiver dismissed); *In re Arkco Properties, Inc.*, 207 B.R. 624 (Bankr. E.D. Ark. 1997) (petitions of parent and subsidiary entities dismissed); *Matter of Heidel House Enterprises, Inc.*, 40 B.R. 932 (Bankr. W.D. Wis. 1984) (case dismissed for lack of unanimous director consent); *Matter of Giggles Rest., Inc.*, 103 B.R. 549 (Bankr. D.N.J. 1989) (purported director consent absent a meeting invalid); *In re Park Towers Corp.*, 387 F.2d 948 (2d Cir. 1967) (shareholder lacked authority to file corporate petition; petition dismissed).

[3] *See In re Real Homes, LLC*, 352 B.R. 221, 228 (Bankr. D. Idaho 2005) (debtor failed to meet burden of demonstrating authority to file).

[4] *Matter of Phillips*, 966 F.2d 926, 935 (5th Cir. 1992).

hurdle is critical to maintenance of the bankruptcy case against a motion to dismiss.[5] The issue is not limited to private business enterprises.[6]

The reward for careful consideration of the legalities is court approval of a bankruptcy filing over opposition by minority shareholders.[7]

The penalty for not bringing the lack of authority issue forward promptly is potentially a finding of implied ratification or waiver.[8]

The corporate status of a person may affect its ability to obtain relief in bankruptcy,[9] as may appointment of a receiver for the debtor prior to filing the bankruptcy petition.[10]

2. Authority To Take Other Actions Matters

Even when a bankruptcy case is pending, issues of corporate authority can arise. Lack of authority may risk dismissal of a complaint,[11] a determination that corporate dissolution was ineffective,[12] or denial of the ability to file a plan of reorganization.[13]

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[5] *E.g. In re Gen. Growth Props., Inc.*, 409 B.R. 43, 65 (Bankr. S.D.N.Y. 2009); *In re Kingston Square Assocs.*, 214 B.R. 713, 735–36 (Bankr. S.D.N.Y. 1997); *In re Lake Michigan Beach Pottawattamie Resort LLC*, 547 B.R. 899, 913 (Bankr. N.D. Ill. 2016).

[6] *In re Suffolk Reg'l Off-Track Betting Corp.*, 462 B.R. 397 (Bankr. E.D.N.Y. 2011) (debtor ineligible for chapter 9 relief due to lack of authority; petition dismissed); compare *In re N.Y. City Off-Track Betting Corp.*, 427 B.R. 256 (Bankr. S.D.N.Y. 2010) (petition authorized); *In re Alleghany-Highlands Econ. Dev. Auth.*, 270 B.R. 647, 649 (Bankr. W.D. Va. 2001) (chapter 9 not authorized by state).

[7] *In re Wet-Jet Int'l, Inc.*, 235 B.R. 142, 145 (Bankr. D. Mass. 1999) (chapter 7 authorized where board was reconstituted prior to approving the bankruptcy filing); see *Matter of Quarter Moon Livestock Co., Inc.*, 116 B.R. 775, 779–80 (Bankr. D. Idaho 1990) (directors were authorized to file bankruptcy petition in case involving deadlocked shareholders); *In re ORFA Corp. of Am. (Del.)*, 115 B.R. 799 (Bankr. E.D. Pa. 1990) (after bankruptcy filing, new directors ratified the petition).

[8] *Hager v. Gibson*, 108 F.3d 35 (4th Cir. 1997) (one year delay in objection by shareholder resulted in effective ratification of unauthorized bankruptcy filing); see *In re Material Eng'g Assocs. Ltd.*, 168 B.R. 204, 210 (Bankr. W.D. Mo. 1994); *see In re Dearborn Process Serv., Inc.*, 149 B.R. 872, 879 (Bankr. N.D. Ill. 1993) (director's resignation validated the remaining director's authorization of bankruptcy filing).

[9] *In re H & K Plumbing & Heating, Inc.*, 187 B.R. 238 (Bankr. W.D. Tenn. 1995) (revoked corporation had ability to file bankruptcy in order to pay the state taxes nonpayment of which caused the revocation).

[10] *Chitex Commc'n, Inc. v. Kramer*, 168 B.R. 587 (S.D. Tex. 1994) (petition dismissed for lack of authority and bad faith); but see *In re Milestone Educ. Inst., Inc.*, 167 B.R. 716 (Bankr. D. Mass. 1994) (case stayed pending state court challenge to receiver's authority to file a bankruptcy petition); *contra In re Corp. & Leisure Event Prods., Inc.*, 351 B.R. 724, 726 (Bankr. D. Ariz. 2006) (appointment of receiver, prohibition against bankruptcy, and receiver's removal of directors ineffective to prevent the directors from authorizing a bankruptcy filing).

3. Bankruptcy May Not Trump Corporate Law Requirements

If the case is safely in bankruptcy, properly authorized, with decision-makers appropriately guiding the debtor in possession, does corporate law still matter? It does if a proposed bankruptcy transaction requires authority under applicable non-bankruptcy corporate law and the corporation's organic documents. The most publicized example at the moment is the shareholder approval of the mergers contemplated by the confirmed Caesars bankruptcy plan.[14] More than 20 years ago a New York bankruptcy court recognized that appropriate corporate action is required for proposing a plan of reorganization, so that corporate deadlock may prevent prosecution of a plan and disclosure statement.[15]

On the other hand, where a debtor seeks an injunction against non-debtors taking corporate action, the bankruptcy court may have power under § 105(a) to enter the injunction. In *Matter of Federated Dept. Stores, Inc.*, the debtor sought an injunction stripping preferred shareholders of the right to elect two directors to the board upon the sixth quarter of missed preferred payments. The opinion of the district court affirming the bankruptcy court suggests the rationale was to avoid $234 million in potential tax liability to the estate.[16] The court noted that Delaware corporate law would authorize such a result if made pursuant to a confirmed plan, because the debtor was on a clear path toward confirmation of a plan, even though the injunction sought was pre-confirmation. Of course, years earlier the *Johns-Manville* court enjoined a shareholders meeting sought by equity to obtain control over the debtor in possession.[17]

4. Control Fight Cases Are Problematic

Some of the most risky cases for a professional to take on are control fight cases. That is a case where control of the debtor, or control of an entity by the debtor, is in material dispute. The risks of such cases may be obvious and less so.

Where a chapter 11 debtor is wracked with a control fight, the bankruptcy court has a straight forward tool – appointment of a trustee. Appointment of a trustee where the

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[11] See *In re Arcella-Coffman*, 352 B.R. 677, 684-85 (Bankr. N.D. Ind. 2006) (action could proceed only as a derivative action).

[12] *In re Arcella-Coffman*, 352 B.R. at 683-84.

[13] *In re New Orleans Paddlewheels, Inc.*, 350 B.R. 667, 690 (Bankr. E.D. La. 2006) (management could not propose plan without board authority; trustee appointed).

[14] "Shareholders meetings key to Caesars leaving bankruptcy," Las Vegas Review Journal, July 22, 2017 (accessed July 24, 2017 at https://www.reviewjournal.com/business/casinos-gaming/shareholders-meetings-key-to-caesars-leaving-bankruptcy/).

[15] *In re Dark Horse Tavern*, 189 B.R. 576 (Bankr. N.D.N.Y. 1995).

[16] *Matter of Federated Dep't Stores, Inc.*, 133 B.R. 886, 891 (S.D. Ohio 1991).

[17] *In re Johns–Manville Corp.*, 52 B.R. 879, 887 (Bankr.S.D.N.Y.1985).

debtor's board is deadlocked might well be in the best interests of the creditors and the estate.[18]

Less obvious is the possibility that a case filed to use the bankruptcy court to leverage a control fight will result in dismissal of the case, such as for lack of good faith[19] or in the best interests of creditors.[20]

5. Control Fights Can Cost You (The Lawyer) Money

An obvious consequence of an unauthorized filing is denial of compensation for counsel,[21] as well as perhaps other sanctions.[22]

A law firm retained without corporate authority to file a petition that lacks authority may not get paid.[23] Where a law firm is terminated by the board of directors, it acts at its peril in continuing to provide services at the behest of management, and in derogation of the board action.[24] Where a control fight breaks out during a case, the lawyer for the debtor whose client decision makers are no longer in control may be denied compensation for, among other things, work on a plan of reorganization after a competing plan is filed by shareholders.[25]

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[18] *In re Advanced Elecs., Inc.*, 99 B.R. 249 (Bankr. M.D. Pa. 1989); *In re Colorado-Ute Elec. Ass'n, Inc.*, 120 B.R. 164, 175 (Bankr. D. Colo. 1990) (deadline in electric co-operative board justified appointment of trustee); *see also In re New Orleans Paddlewheels, Inc.*, 350 B.R. 667, 690 (Bankr. E.D. La. 2006); *Matter of Tahkenitch Tree Farm P'ship*, 156 B.R. 525, 528 (Bankr. E.D. La. 1993) (appointment of trustee where general partners of debtor partnership were deadlocked).

[19] E.g. *In re Dewey Commercial Inv'rs, L.P.*, 503 B.R. 643 (Bankr. E.D. Pa. 2013) (bankruptcy filing for the purpose of obtaining transfer of partnership interest dismissed); *In re Argus Grp. 1700, Inc.*, 206 B.R. 737, 753 (Bankr. E.D. Pa. 1996), *aff'd sub nom. Argus Grp. 1700, Inc. v. Steinman*, 206 B.R. 757 (E.D. Pa. 1997) (case filed to leverage state court partnership litigation dismissed for bad faith).

[20] *In re A & T P'ship*, 192 B.R. 900 (Bankr. S.D. Ohio 1996) (involuntary dismissed under § 305 as effort to place partnership fight into bankruptcy).

[21] *In re AT Eng'g, Inc.*, 142 B.R. 990 (Bankr. M.D. Fla. 1992) (unauthorized chapter 7, retainer ordered disgorged); *In re D & V Const., Inc.*, 150 B.R. 362 (Bankr. W.D. Pa. 1993) (disgorgement of fees paid to counsel (and nominal sanction against petition signer)).

[22] *In re Lamar Crossing Apartments, L.P.*, 464 B.R. 61 (B.A.P. 6th Cir. 2011) (opposing party's attorneys' fees and costs awarded as sanction for unauthorized, bad faith filing); *In re Lamar Crossing Apartments, L.P.*, 464 B.R. 61 (B.A.P. 6th Cir. 2011) ($10,000 award against person who signed unauthorized petition); *In re Yellow Cab Co-op. Ass'n*, 144 B.R. 505, 507 (D. Colo. 1992) (sanctions against counsel for filing bankruptcy petition without authorization of receiver or a majority of the board).

[23] *In re Gen-Air Plumbing & Remodeling, Inc.*, 208 B.R. 426, 433 (Bankr. N.D. Ill. 1997) (retention application denied and petition dismissed).

[24] *In re Masterwear Corp.*, 233 B.R. 266, 271 (Bankr. S.D.N.Y. 1999).

[25] *In re Entm't, Inc.*, 225 B.R. 412, 425 (Bankr. N.D. Ill. 1998).

6. Knowing Who Paid You Matters

Related to issues of authority is the issue of payment. A law firm may be employed to represent an entity but is directed by a human being. From experience, lawyers in big firms often don't see the checks and don't know where funds come from. A Florida firm discovered that a client representative's apparent authority to represent that he individually was the source of a $125,000 retainer, not the entity client, was false. The entity's trustee in bankruptcy sought turnover of the retainer after the individual obtained refund of the retainer after payment of outstanding bills for representation of the individual and the entity. The firm had essentially assisted the individual convert corporate funds when it returned the balance to the individual, and found itself liable for the same funds to the trustee.[26]

Conclusion

Control fights raise serious rights in bankruptcy for debtors and their lawyers. Careful counsel need to search for and plan in advance to navigate control fights.

[26] *In re U.S.A. Diversified Prod., Inc.*, 193 B.R. 868 (Bankr. N.D. Ind. 1995), *aff'd*, 196 B.R. 801 (N.D. Ind. 1996), *aff'd sub nom*. *Matter of USA Diversified Prod., Inc.*, 100 F.3d 53 (7th Cir. 1996).

You Know You Are In Trouble When You Wish the Court had Approved What You Were Doing a Long Time Ago.

There are numerous circumstances in which a bankruptcy attorney or professional may wish they had court approval a long time ago. These materials will discuss such circumstances in relation to two overarching themes, employment applications and ordinary course transactions needing court approval. Regarding employment applications, these materials will focus on obtaining *nunc pro tunc* employment, issues that may arise in complying (or not) with disclosure requirements, determining the reasonableness of indemnification provisions, and issues that may arise when professionals attempt to limit their services. In relation to transactions needing court approval, these materials will focus on the risks of assuming a transaction is within the debtor's ordinary course of business, and issues that may arise when applying for administrative expense priority.

I. Employment Applications

A. Nunc Pro Tunc Employment.

The earliest a court can approve employment is the date employment is sought. However, in the 9th Circuit, a retroactive award of fees for services rendered without court approval is sometimes permitted. *In re Atkins*, 69 F.3d 970, 973 (9th Cir. 1995). Such retroactive approval, also known as *nunc pro tunc* approval, must be limited to situations where "exceptional circumstances" exist. *Id.* at 974, *citing In re THC Financial Corp.*, 837 F.2d 389 (9th Cir. 1988). Where exceptional circumstances exist, a court may exercise its discretion to award fees for valuable but unauthorized services. *Atkins*, 69 F.3d at 974. An applicant must "(1) satisfactorily

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explain their failure to receive prior judicial approval [of their employment]; and (2) demonstrate that their services benefited the bankruptcy estate in a significant manner." *Id.* The consequences of not meeting the exceptional circumstances requirements may be a denial of the employment application and any requested fees. *See, THC Financial Corp.*, 837 F.2d at 392 (explaining denial of the professional's fee application was appropriate when she failed to demonstrate both that her efforts benefited the estate and that she had a satisfactory reason to explain her failure to obtain prior court approval).

B. Inadequate Disclosures.

Even if a professional seeks employment at the outset, he or she may run into problems if the employment application did not adequately disclose all relevant information. "Pursuant to the disclosure rules of §§ 327 and 329 and Rules 2014 and 2016, the [professional] has the duty to disclose all relevant information to the court, and may not exercise any discretion to withhold information." *In re Woodcraft Studios, Inc.*, 464 B.R. 1, 8 (N.D. Cal. 2011), *citing In re Park-Helena Corp.*, 63 F.3d 877, 882 (9th Cir. 1995). Courts have the discretion to consider the totality of all the circumstances surrounding the disclosure violation. *See Park-Helena Corp., 63 F.3d at 882* (holding that the failure to disclose necessitated a denial of all requested fees when the failure was not negligent or inadvertent, but willful); *McGrane L.L.P. v. Howrey L.L.P.*, 15-17175, 2017 WL 2790690, at *2 (9th Cir. 2017) (explaining that the court did not abuse its discretion by considering the ethical violations in nondisclosure when reducing a fee award).

A recent opinion by Judge Houser of the Bankruptcy Court for the Northern District of Texas demonstrates the consequences of a negligent or inadvertent failure to adequately disclose information. *Harris-Nutall*, No. 14-35300-BJH, 2017 WL 2533349, at *1 (Bankr. N.D. Tex. June 9, 2017). In *Harris-Nuttall*, the court approved special counsel's retention agreement but

later found that a fee sharing agreement was only "cryptically referenced" in the application itself. *Id.* at *9. Although Judge Houser said she did not believe that counsel had intentionally mislead the court, the disclosure was still less than complete. *Id.* Judge Houser cancelled the fee sharing agreement and reduced the firm's fees by 25%. *Id.* at *10 (explaining that § 504(a) of the Bankruptcy Code generally prohibits fee sharing agreements).

C. Indemnity Agreements.

Another instance where trouble may arise subsequent to court approved employment is with the presence of indemnity clauses in a professional's retention agreement. The typical indemnity agreement calls for a debtor to indemnify the professional for damages sustained and fees incurred by the professional in the course of their work for the debtor or committee. Although, the weight of authority rejects indemnity provisions and/or exculpation provisions for financial advisors in bankruptcy cases, the Code does not prohibit such provisions so there is no per se rule against such protections for professionals. *In re Metricom, Inc.*, 275 B.R. 364, 369, 371 (Bankr. N.D. Cal. 2002), *citing In re Allegheny Int'l, Inc.*, 100 B.R. 244, 244–45 (Bankr. W.D. Pa. 1989); *In re Mortg. & Realty Trust*, 123 B.R. 626, 628–29 (Bankr. C.D. Cal. 1991). The proponent of the employment application must carry the burden to establish the reasonableness of any indemnification provisions, as required by §328(a). *In re Metricom*, 275 B.R. at 371.

If a court initially approves a professional's employment agreement containing an indemnification provision, that earlier approval can be determinative. For instance, in *In re Allegheny International, Inc.*, the court *sua sponte* modified an indemnity provision that it had previously approved. 100 B.R. at 244–45. The court noted that elimination of the indemnity

clause altogether would be inequitable after having approved a broad indemnity provision. *Id.* at 246.

In *In re Mortgage & Realty Trust*, the court initially denied an employment application where the employment agreement contained an indemnification clause. 123 B.R. at 628–29. The financial advisor then filed a motion for reconsideration after substantially reducing the indemnification request to extend only to acts other than negligence, gross negligence, or willful misconduct. *Id.* The court again found that the financial advisor failed to demonstrate the reasonableness of the proposed indemnity provision. *Id*. at 62. The court emphasized the importance of its initial denial of the indemnification clause in explaining the equity of its decision, as opposed to *Allegheny* where the court had initially approved a very broad indemnification clause. *Id.* at 630.

D. Unbundled Legal Services Agreements.

When an attorney seeks to limit the scope of their representation (i.e. "unbundle" his or her services) issues may arise. The 9th Circuit BAP has held that unbundling of services is permissible only if "the decision to unbundle is reasonable under the circumstances." *In re Seare*, 493 B.R. 158, 194 (Bankr. D. Nev. 2013), *as corrected* (Apr. 10, 2013), *aff'd*, 515 B.R. 599 (B.A.P. 9th Cir. 2014). The test for reasonableness is "not whether, after the fact, the service proved to be of some use to the client, but rather whether, at the time of the agreement, a lawyer reasonably could have concluded that the service would be useful to the client." *Id.* at 192.

The court in *In re Seare* determined that an attorney's boilerplate fee agreement was an unethical unbundling of services where even a minimal investigation would have resulted in the attorney realizing he was unbundling adversary proceedings in a bankruptcy case that was almost certain to draw a dischargeability adversary proceeding. *Id.* at 195. The court found that the

attorney's negligence caused the debtor to suffer substantial actual and potential injury. *Id.* at 224. The court sanctioned the attorney with disgorgement of all fees received, published the Bankruptcy Court's opinion, and required that the attorney take continuing legal education classes. *Id.* at 224-27.

II. **Other Transactions Needing Court Approval**

A. Transfers Out of the Debtor's Ordinary Course of Business.

In dealing with post-petition transfers, a trustee may avoid a transfer of property of the estate which occurs after the commencement of the case and which is not otherwise authorized by the Bankruptcy Code or by order of the court. 11 U.S.C. § 549(a)(1) & (a)(2)(B). Section 363(c)(1) of the Bankruptcy Code gives the debtor the ability to engage in transactions which are in the debtor's ordinary course of business without the requirement of court approval.

"A determination of whether a transaction falls outside the ordinary course of business is a question of fact that depends on the nature of industry practice." *In re Straightline Investments, Inc.*, 525 F.3d 870, 879 (*quoting Ganis Credit Corp. v. Anderson* (*In re Jan Weilert RV, Inc.*), 325 F.3d 1192, 1196 (9th Cir. 2003)). "Two tests have emerged for determining whether a transaction is within the ordinary course of business for purposes of § 363(c)—the vertical dimension, or creditor's expectation, test, and the horizontal dimension test." *Straightline Investments, Inc.*, 525 F.3d at 879 (explaining the requirements for each test). If the court determines a transaction was not an ordinary course of business transaction, the trustee can avoid the transfer under § 549(a) of the Bankruptcy Code.

B. Administrative Expense Claims.

If a party to a post-petition ordinary-course transaction has not received payment from the debtor, they may apply to the bankruptcy court for payment as an administrative expense.

Administrative expenses include the "actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). The claimant must show that the debt arose from a transaction with the debtor-in-possession and directly and substantially benefited the estate. *See In re National Refractories & Minerals Corp.*, 297 B.R. 614, 618–19 (Bankr. N.D. Cal., 2003) (explaining that there is no claim for administrative expense priority when there is no direct benefit to the estate); *In re Korn*, 352 B.R. 228, 247 (Bankr. D. Idaho 2006) (holding that administrative expense priority would not be awarded when the benefit was only incidental).

However, even if the benefit is direct and substantial, it does not always follow that such a claim will be approved. For instance, in *In re Central Idaho Forest Products,* creditor Buswell, filed suit against principals of the debtor after the Debtor failed to pay them for services provided after the debtor's bankruptcy case was closed. 317 B.R. 150, 152 (Bankr. D. Idaho 2004). During the litigation, Buswell's attorney discovered funds belonging to the debtor which should have been included in the estate of debtor's prior bankruptcy. *Id.* Buswell subsequently applied for an administrative expense claim pursuant to § 503(b)(3)(B) for their work in discovering this estate property. *Id.* at 156. The court denied Buswell's application for administrative expense priority because he did not seek or obtain prior court approval as § 503(b)(3)(B) requires for recovery administrative expense claims. *Id.* at 157. The court reasoned that, although no creditor of the estate objected and the Trustee supported the request, "the fact that a benefit was conferred on or received by the estate does not alone or automatically justify allowance of an administrative expense." *Id.* at 154. The court is not at liberty to ignore the language found in § 503(b)(3)(B) requiring prior court approval. *Id.* at 157.

Similarly, if a transaction is outside a debtor's ordinary course of business, it requires prior notice, hearing and court approval before an administrative expense priority can be

allowed. 11 U.S.C. § 364(b); In *In re Korn*, 352 B.R. at 247-48 the purchaser of real property of the chapter 11 debtor-in-possession filed an administrative expense claim in association with assisting in the debtor's relocation of exotic animals from the purchased property. *Id. at* 232. The court determined that the sale of property and relocation of animals was clearly outside the ordinary course of the debtor's business, yet the purchaser had not obtained court authorization. *Id.* at 247-48. This prevented the court from evaluating whether such an arrangement was in the best interest of the debtor and prevented interested parties from objecting and being heard. *Id.* The court denied the purchaser's request for an administrative expense.